

§ 1.07-90

§ 1.07-90 Criminal penalties.

(a) Prosecution in the Federal courts for violations of those laws or regulations enforced by the Coast Guard which provide, upon conviction, for punishment by fine or imprisonment is a matter finally determined by the Department of Justice. This final determination consists of deciding whether and under what conditions to prosecute or to abandon prosecution.

(b) Except in those cases where the approval of the Commandant is required, the Area, Maintenance & Logistics Command (MLC), and District Commanders are authorized to refer the case to the U.S. attorney. The Commandant's approval is required in the following cases where evidence of a criminal offense is disclosed:

(1) Marine casualties or accidents resulting in death.

(2) Marine Boards (46 CFR part 4).

(3) Violations of port security regulations (33 CFR parts 6, 121 to 126 inclusive).

(c) The Area, MLC, or District Commander will identify the laws or regulations which were violated and make specific recommendations concerning the proceedings to be instituted by the U.S. attorney in every case.

[CGD 78-82, 43 FR 54186, Nov. 20, 1978, as amended by USCG-2001-9286, 66 FR 33639, June 25, 2001]

§ 1.07-95 Civil and criminal penalties.

(a) If a violation of law or regulation carries both a civil and a criminal penalty, the Area, MLC, and District Commanders are authorized to determine whether to institute civil penalty proceedings or to refer the case to the U.S. attorney for prosecution in accordance with § 1.07-90.

(b) When the U.S. Attorney declines to institute criminal proceedings, the Area, MLC, or District Commander decides whether to initiate civil penalty proceedings or to close the case.

[CGD 78-82, 43 FR 54186, Nov. 20, 1978, as amended by USCG-2001-9286, 66 FR 33639, June 25, 2001]

33 CFR Ch. I (7-1-09 Edition)

§ 1.07-100 Summons in lieu of seizure of commercial fishing industry vessels.

(a) As used in this section, the following terms have the meanings specified:

(1) *Commercial fishing industry vessel* means a fishing vessel, a fish processing vessel, or a fish tender vessel as defined in 46 U.S.C. 2101 (11a), (11b), or (11c), respectively.

(2) *Personal use quantity* means a quantity of a controlled substance as specified in 19 CFR 171.51.

(b) When a commercial fishing industry vessel is subject to seizure for a violation of 21 U.S.C. 881(a)(4), (6), or (7); of 19 U.S.C. 1595a(a); or of 49 U.S.C. App. 782 and the violation involves the possession of a personal use quantity of a controlled substance, the vessel shall be issued a summons to appear as prescribed in subpart F of 19 CFR part 171 in lieu of seizure, provided that the vessel is:

(1) Proceeding to or from a fishing area or intermediate port of call; or

(2) Actively engaged in fishing operations.

[CGD 89-003, 54 FR 37615, Sept. 11, 1989]

Subpart 1.08—Written Warnings by Coast Guard Boarding Officers

AUTHORITY: 14 U.S.C. 633; 49 CFR 1.46(b).

§ 1.08-1 Applicability.

(a) The regulations in this subpart apply to certain violations of the following statutes and regulations for which Coast Guard boarding officers are authorized to issue written warnings instead of recommending civil or criminal penalty procedures under subpart 1.07 of this part:

(1) 46 CFR 25.05 whistles or other sound producing devices;

(2) 33 CFR part 175, subpart B and 46 CFR subpart 25.25, Personal Flotation Devices.

(3) 46 CFR 25.35 backfire flame control;

(4) 46 CFR 25.40 ventilation;

(5) 33 CFR part 173 numbering;

(6) 46 U.S.C. 103, documented yachts;

(7) 33 CFR part 155 oil pollution prevention; and

(8) 46 CFR 25.30 fire extinguishers;

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(9) 33 CFR part 159 marine sanitation devices;

(10) 33 CFR part 175 subpart C, Visual Distress Signals.

(11) 33 CFR 88.05 Copy of rules.

(b) The Commandant authorizes designated boarding officers to issue warnings for certain minor violations of the statutes and regulations listed in paragraph (a) of this section. Written warnings are not authorized for all violations of these statutes and regulations.

(14 U.S.C. 633, 85 Stat. 228 (46 U.S.C. 1488); 86 Stat. 871 (33 U.S.C. 1322); 49 CFR 1.46(b), (m), and (n)(1))

[CGD 74-155, 41 FR 17894, Apr. 29, 1976, as amended by CGD 77-182, 43 FR 22657, May 25, 1978; CGD 82-040, 47 FR 21042, May 17, 1982; CGD 85-009, 50 FR 10761, Mar. 18, 1985]

§ 1.08-5 Procedures.

(a) A written warning may be issued where the boarding officer determines that:

(1) The observed violation is a first offense; and

(2) The operator states that the violation will be promptly corrected.

(b) A written warning may not be issued where:

(1) The operator is required to be licensed or credentialed;

(2) The violation is a failure to have required safety equipment on board; or

(3) The boarding officer notes three or more violations during one boarding.

(c) Each district office maintains a record of each written warning issued within that district for a period of not more than one year after date of issue except in cases involving violations of 33 CFR part 159 marine sanitation devices, records of which are maintained by each district office for not more than three years after date of issue.

(d) The district commander of the district in which the warning is issued may rescind a written warning and institute civil penalty action under § 1.07-10 of this part if a record check discloses a prior written warning or violation issued within one year or in the case of a violation of 33 CFR part 159 a prior written warning or violation issued within three years.

(e) Within 15 days after the date of issue, any person issued a written warning by a Coast Guard boarding of-

ficer may appeal the issuance of the warning to the district commander by providing in writing or in person any information that denies, explains, or mitigates the violations noted in the warning.

(f) Each written warning shall indicate that:

(1) The warning is kept on file for a period of not more than one year after date of issue or in the case of a violation of 33 CFR part 159 a period of not more than three years for reference in determining appropriate penalty action if there is a subsequent violation;

(2) If a record check reveals a prior written warning or violation within the time period designated in § 1.08-5(d) of this part, the warning may be revoked and civil penalty action instituted;

(3) If an additional violation occurs within the time period designated in § 1.08-5(d) the warning may be used as a basis for the assessment of a higher penalty for the subsequent violation; and

(4) Within 15 days after the date of issue, the person who is issued the warning may appeal to the District Commander by providing in writing or in person any information or material that denies, explains, or mitigates the violations noted in the warning.

(14 U.S.C. 633; 85 Stat. 228 (46 U.S.C. 1488); 86 Stat. 871 (33 U.S.C. 1322); 49 CFR 1.46 (b), (m), and (n)(1))

[CGD 74-155, 41 FR 17894, Apr. 29, 1976, as amended by CGD 77-182, 43 FR 22657, May 25, 1978; USCG-2006-25150, 71 FR 39208, July 12, 2006; USCG-2006-24371, 74 FR 11211, Mar. 16, 2009]

Subpart 1.10—Public Availability of Information

AUTHORITY: 5 U.S.C. 552, 14 U.S.C. 633, sec. 6(b)(1), 80 Stat. 937 (49 U.S.C. 1655(b)(1)); 49 CFR 1.46(b).

SOURCE: CGD-73-54R, 38 FR 12396, May 11, 1973, unless otherwise noted.

§ 1.10-1 Official records and documents.

Identifiable records and documents of the Coast Guard are made available to